UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAYMOND WALLACE, Petitioner, -against- SUPERINTENDENT OF THE CLINTON CORRECTIONAL FACILITY Respondent.	13-cv-3989 (NSR) (PED) ORDER ADOPTING REPORT AND RECOMMENDATION

NELSON S. ROMÁN, United States District Judge

Before the Court is Magistrate Judge Paul E. Davison's Report and Recommendation ("R & R"), dated April 7, 2014, on petitioner Raymond Wallace's petition for a writ of *habeas corpus*, pursuant to 28 U.S.C. § 2254, from his September 15, 1998 conviction entered in Westchester County Court. Judge Davison recommended the Court deny the petition. The Court adopts the R & R as the opinion of the Court, and denies the petition.

Background[1]

On September 15, 2008, after a jury trial, Petitioner was convicted of the following criminal offenses: one count of aggravated assault on a police officer; one count of attempted murder in the first degree; one count of criminal possession of a weapon in the second degree; one count of assault in the first degree; twelve counts of robbery in the first degree; and two counts of attempted robbery in the first degree. Petitioner was sentenced as a second felony offender to 280 years to life in prison.

Petitioner appealed his conviction to the New York State Appellate Division, Second

[1] For a more complete recitation of the facts, refer to Judge Davison's R & R.

Department. *People v. Wallace*, 293 A.D.2d 556 (2002). Petitioner's leave to appeal to the New York Court of Appeals was denied on August 29, 2002. *People v. Wallace*, 98 N.Y.2d 714 (2002). On May 29, 2013 Petitioner filed a petition seeking a federal writ of *habeas corpus*, raising a number of grounds.

On April 7, 2014, Judge Davison issued the R & R recommending this court deny the petition for a writ of *habeas corpus* on the basis that Petitioner's *habeas* petition was untimely, the statute of limitations should not be tolled, Petitioner failed to establish actual innocence, and the AEDPA's statute of limitations is constitutional. Neither party has filed written objections to the R & R.

Discussion

A magistrate judge may "hear a pretrial matter [that is] dispositive of a claim or defense" if so designated by a district court. Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1)(B). Where a magistrate judge issues a report and recommendation,

> [w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings or recommendations as provided by rules of court. A judge of the court shall made a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b); *accord* Fed. R. Civ. P. 72(b)(2), (3). However, the district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); *accord Feehan v. Feehan*, No. 09 Civ. 7016 (DAB), 2011 WL 497776, at *1 (S.D.N.Y. Feb. 10, 2011); *see also* Fed. R. Civ. P. 72 advisory committee note (1983 Addition, Subdivision (b)) ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face

of the record in order to accept the recommendation."). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Here, as neither party objected to Judge Davison's R & R, the Court reviews the recommendation for clear error. The Court has reviewed Judge Davison's R & R and finds no error, clear or otherwise.

Conclusion

Accordingly, the Court adopts Magistrate Judge Davison's Report & Recommendation in its entirety. The petition for a writ of habeas corpus is, therefore, DENIED. The Clerk is instructed to enter judgment accordingly and close this case.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Dated: June 20th, 2014
White Plains, New York

SO ORDERED:

6/20/14

NELSON S. ROMÁN
United States District Judge